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Attorneys for Plaintiff and Counterclaim-Defendant  
Citigroup Global Markets, Inc.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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) ECF CASE  
CITIGROUP GLOBAL MARKETS, INC. )  
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Plaintiff, ) Case No. 1:09-cv-06786-LMM  
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)  
- against - )  
)  
ACTUATE CORPORATION, ) ANSWER TO COUNTERCLAIM  
)  
Defendant. )  
)  
\_\_\_\_\_  
)

Plaintiff and Counterclaim-Defendant Citigroup Global Markets, Inc. (“CGMI”),  
by its attorneys Kramer Levin Naftalis & Frankel LLP, for its Answer to the Counterclaim of  
Defendant and Counterclaim-Plaintiff Actuate Corporation (“Actuate”), states as follows:

**NATURE OF THE COUNTERCLAIM**

1. CGMI denies the allegations contained in paragraph 1 of the Counterclaim.
2. CGMI denies the allegations contained in paragraph 2 of the Counterclaim and further denies that Actuate is entitled to any relief.

## **PARTIES**

3. CGMI believes that Actuate is a Delaware corporation but otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 3 of the Counterclaim, and therefore denies same.

4. CGMI admits the allegations contained in paragraph 4 of the Counterclaim.

## **JURISDICTION & VENUE**

5. Paragraph 5 of the Counterclaim purports to state legal conclusions as to which no response is required.

6. Paragraph 6 of the Counterclaim purports to state legal conclusions as to which no response is required.

## **GENERAL ALLEGATIONS**

7. CGMI lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Counterclaim, and therefore denies same.

8. CGMI lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Counterclaim, and therefore denies same.

9. CGMI lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the Counterclaim, and therefore denies same.

10. CGMI lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the Counterclaim, and therefore denies same.

11. CGMI lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Counterclaim, and therefore denies same.

12. CGMI lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Counterclaim, and therefore denies same.

13. CGMI lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Counterclaim, and therefore denies same.

14. CGMI lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the Counterclaim, and therefore denies same.

15. CGMI admits that Actuate has licensed certain software to CGMI, but otherwise denies the allegations contained in paragraph 15 of the Counterclaim.

16. CGMI admits that Actuate has licensed certain software to CGMI, but otherwise denies the allegations contained in paragraph 16 of the Counterclaim, and states that the documents speak for themselves.

17. CGMI denies the allegations contained in paragraph 17 of the Counterclaim, and states that the documents speak for themselves.

18. CGMI denies the allegations contained in paragraph 18 of the Counterclaim, and respectfully refers the Court to the documents for a complete and accurate statement of their content.

19. CGMI denies the allegations contained in paragraph 19 of the Counterclaim, and respectfully refers the Court to the documents for a complete and accurate statement of their content.

20. CGMI denies the allegations contained in paragraph 20 of the Counterclaim, and respectfully refers the Court to the documents for a complete and accurate statement of their content.

21. CGMI admits the allegations contained in paragraph 21 of the Counterclaim.

22. CGMI denies the allegations contained in paragraph 22 of the Counterclaim, and respectfully refers the Court to the documents for a complete and accurate statement of their content.

23. CGMI denies the allegations contained in paragraph 23 of the Counterclaim, and respectfully refers the Court to the documents for a complete and accurate statement of their content.

24. CGMI lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 of the Counterclaim, and therefore denies same.

25. CGMI denies the allegations contained in paragraph 25 of the Counterclaim.

26. CGMI denies the allegations contained in paragraph 26 of the Counterclaim.

27. CGMI lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27 of the Counterclaim, and therefore denies same.

28. CGMI denies the allegations contained in paragraph 28 of the Counterclaim, and respectfully refers the Court to the documents for complete and accurate statements of their content.

29. CGMI denies the allegations contained in paragraph 29 of the Counterclaim.

**FIRST CAUSE OF ACTION**  
(Breach of Contract)

30. In response to paragraph 30 of the Counterclaim, CGMI repeats and realleges its responses to paragraphs 1 through 29 as though fully set forth herein.

31. CGMI denies the allegations contained in paragraph 31 of the Counterclaim, and respectfully refers the Court to the documents for accurate and complete statements of their content.

32. CGMI denies the allegations contained in paragraph 32 of the Counterclaim.

33. CGMI denies the allegations contained in paragraph 33 of the Counterclaim, and respectfully refers the Court to the documents for accurate and complete statements of their content.

34. CGMI denies the allegations contained in paragraph 34 of the Counterclaim.

35. CGMI denies the allegations contained in paragraph 35 of the Counterclaim, and denies there were any such obligations.

36. CGMI denies the allegations contained in paragraph 36 of the Counterclaim.

**SECOND CAUSE OF ACTION**  
(Copyright Infringement)

37. In response to paragraph 37 of the Counterclaim, CGMI repeats and realleges its responses to paragraphs 1 through 36 as though fully set forth herein.

38. CGMI lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 of the Counterclaim, and therefore denies same.

39. CGMI denies the allegations contained in paragraph 39 of the Counterclaim.

40. CGMI denies the allegations contained in paragraph 40 of the Counterclaim.

41. CGMI denies the allegations contained in paragraph 41 of the Counterclaim.

42. CGMI denies the allegations contained in paragraph 42 of the Counterclaim.

**DEMAND FOR JUDGMENT**

CGMI denies that Actuate is entitled to any of the relief requested in paragraphs A through E of the Counterclaim.

**AFFIRMATIVE DEFENSES**

1. The Counterclaim fails to state any claims upon which relief may be granted.

2. The Counterclaim is barred in whole or in part by Actuate's own unclean hands and inequitable conduct.

3. The Counterclaim is barred in whole or in part by the doctrines of waiver, estoppel and laches.

4. The Counterclaim is barred and/or the amount of recovery pursuant to the Counterclaim should be reduced as a result of Actuate's failure to mitigate its damages.

5. The Counterclaim is barred because the documents contain a penalty clause which is unenforceable for the reasons recited in the Complaint.

6. The Counterclaim is barred under the doctrine of impossibility of performance.

7. The Counterclaim is barred by reason of Actuate's improper acts as alleged in the Complaint.

8. The asserted copyright registrations are not enforceable against CGMI.

9. CGMI has not infringed the copyrights.

10. CGMI reserves its right to assert additional affirmative defenses in the event discovery indicates that they are appropriate.

WHEREFORE, CGMI respectfully requests judgment as follows:

- A. For all of the relief sought in the Complaint;
- B. Dismissing the Counterclaim with prejudice and awarding CGMI its costs and disbursements, including legal fees; and
- C. Such other and further relief as the Court deems just and proper under the circumstances.

Dated: New York, New York  
November 25, 2009

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